



CenturyLink™

John E. Benedict

Vice President

Federal Regulatory Affairs & Regulatory Counsel

1099 New York Avenue NW

Suite 250

Washington, DC 20001

202.429.3114

Fax: 913-397-3836

john.e.benedict@centurylink.com

EX PARTE

March 28, 2013

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street SW

Washington, DC 20554

RE: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42;
Lifeline and Link Up, WC Docket No. 03-109; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Advancing Broadband Availability through Digital Literacy Training*, WC Docket No. 12-23

Dear Ms. Dortch:

On March 26, 2013, Robert Brigham, Pam Hankins, and Jeb Benedict, all of CenturyLink, spoke by telephone with Kim Scardino and Garnet Hanly of the Wireline Competition Bureau. The group discussed the status of Colorado's implementation of the Commission's *Lifeline Reform Order*¹ and the Colorado Public Utilities Commission's pending request to extend its current waiver of the uniform eligibility requirement.² CenturyLink encouraged the Commission to grant the extension. This letter reflects and expands on CenturyLink's reasons for supporting COPUC's request.

First, Colorado's legislature has passed Lifeline reform legislation, and the measure is now headed to the governor for signature. However, the state law will remain in place until July 1, 2013, a short time after the current waiver expires on April 1, 2013. The legislation passed and sent to the governor includes continuation of the Lifeline program until July 1, 2013.

Second, Colorado is among states that administers the Lifeline program and determines eligibility. Colorado also handles certification of new applicants and assists ETCs in the recertification of existing Lifeline subscribers. Rather than conforming state Low Income Telephone Assistance Program eligibility criteria to the new federal Lifeline criteria, the newly

¹ *Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

² *Lifeline and Link Up Reform and Modernization, et al.*, Waiver Order, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, DA 12-863 (rel. May 31, 2012) ("*Waiver Order*").

passed legislation will eliminate the state program altogether, shifting all Lifeline administration to carriers like CenturyLink, after a short transition through July 1, 2013.

Third, ETCs need time to change their systems and processes to reflect the unexpected changes in Colorado. Without the waiver extension, ETCs might be expected to put in place a temporary, bifurcated system by which they would receive and process applications based on the few federal eligibility criteria that the state law does not recognize. Such a system would be confusing to customers, create a wide variety of risks and problems in program administration for the state and the ETC. Regardless, it would be impossible for CenturyLink to put such an unexpected and immensely complex regime in place by April 1, and would require easily 90 days or more to create. It would make no sense to expend such resources or adopt such a confusing system when ETCs will assume full administration of Lifeline with unified federal criteria on July 1. Moreover, CenturyLink and other ETCs will need time both to modify their systems and to coordinate with state authorities to transition full Lifeline administration. Extending the waiver to match the new Colorado law's July 1 date is in the public interest for that reason alone.

Fourth, the extension will benefit the public interest, while imposing little burden on the Lifeline program and only a short inconvenience for those potential few Lifeline applicants who cannot qualify under Colorado law but might otherwise qualify under the new federal rules. The transition will avoid confusion, processing delays, and inconvenience for consumers, and will delay only briefly the uniform eligibility envisioned by the Commission's Lifeline reform. Extending the waiver also will allow ETCs to ensure a seamless and accurate transition of administration from the state, minimizing errors and risks of waste, fraud, and abuse. Being brief, the extension to July 1 would add minimal burden to the Lifeline program.

Developments in Colorado

For almost 25 years, COPUC and the DHS have managed the federal and state low-income telephone support programs. Unlike many other states where ETCs like CenturyLink manage the process, in Colorado the state receives Low Income Telephone Assistance Program and Lifeline applications, determines eligibility, directs ETCs to apply the appropriate discount, and even handles certification and assists in recertification of program participants.³ The state also handles record-keeping for the program.

A state statute outlines the eligibility requirements for both federal and state support programs.⁴ Until the *Lifeline Reform Order*, the Commission's rules provided that federal eligibility would mirror state eligibility criteria. The order's amendments to the rules mean that federal criteria no longer match Colorado's. Revising the state eligibility requirements to reflect the new federal criteria requires an act by the legislature.

³ *Waiver Order* at ¶ 11.

⁴ The Emergency Telephone Access Act of 1990 created the Colorado Low Income Telephone Assistance Program. See 40-3.4-105, Colo. Rev. State. (outlining eligibility criteria).

The Current Waiver

On April 6, 2012, COPUC asked the Commission for a waiver of the June 1, 2012 effective date for adopting uniform eligibility criteria in Colorado.⁵ It explained that, as a practical matter, the state would be unable to revise its statute until the 2013 legislative session. It also explained that, even if no state law changes were needed, the public interest would not be served by compelling the state to have a separate federal program for an interim period, or by creating conditions likely to confuse customers and pointlessly require ETCs to develop two separate processes for handling Lifeline accounts – with some applications accepted by one program and not the other. A waiver until July 1, 2013 would allow time to ensure the legislative process would be completed and would avoid these otherwise likely public interest harms.

On May 31, 2012, the Commission granted Colorado's request. The Commission explained that Colorado "mandate[s] state Lifeline support and has a state statute governing Lifeline eligibility criteria."⁶ It noted that, until the Commission's new amendments, the long-standing federal rules provided that federal eligibility criteria would mirror state criteria, and Colorado's "statutorily mandated eligibility criteria do not match the Commission's newly amended rules." It also noted that Colorado administers its program "in conjunction with the federal Lifeline program and qualif[ies] consumers ... using the eligibility criteria established in their respective state statutes."

The Commission found good cause to grant the waiver.⁷

The uniform eligibility criteria established in the *Lifeline Reform Order* are designed to create a baseline of eligibility for the federal program, to facilitate the establishment of an automatic means of checking for Lifeline eligibility and to reduce burdens on ETCs by standardizing eligibility across the state. A temporary limited waiver from the uniform eligibility criteria is consistent with these policies, narrowly tailored to the particular circumstances....

It added that the waiver would allow COPUC to continue its efforts to administer the Lifeline program and eliminate waste, fraud, and abuse, and "avoid creating a bifurcated process under which some subscribers are signed up through the state administrators and others through the

⁵ Petition for Waiver of the Colorado Public Utilities Commission (filed Apr. 6, 2012). CenturyLink was among parties who filed comments in support of COPUC's petition. See Comments of CenturyLink in Support of Petitions for Waiver (filed May 15, 2012); Comments of the Colorado Telecommunications Association in Support of the Petition for Waiver of the Colorado Public Utilities Commission (filed May 15, 2012).

⁶ *Waiver Order* at ¶ 11. The order granted the same temporary waiver to Oregon for the same reasons (¶ 13). It also granted a separate waiver to California for difference reasons (¶¶ 8-11) and, at the request of USTelecom, another limited waiver to ETCs in other states where the state collects certifications of eligibility but has not adopted procedures to provide ETCs with those certifications (¶ 3).

⁷ *Id.* at ¶ 13.

ETCs.”⁸ It would avoid the customer confusion that would arise “from an interim, bifurcated process in which ETCs sign up consumers through certain qualifying programs, while the state continues to sign up consumers through the qualifying programs enumerated in state law.” At the same time, the waiver would “not have a substantial impact on the ability of low-income consumers to obtain Lifeline benefits,” and the effect on enrollment would be “short and temporary.”

The Commission, however, elected to limit Colorado’s waiver to April 1, 2013.⁹ The order said the Commission believed that the state could complete the statutory changes earlier in the legislative process, and concluded that the state had not demonstrated that the additional time to July 1, 2013 was truly necessary. It directed COPUC to update the Commission by March 1, 2013 about the status of legislative changes to Colorado’s Lifeline statute. And it noted that if the deadline April 1, 2013 implementation date could not be met, an additional waiver request could be filed.¹⁰

Each of the grounds for granting the waiver until April 1 apply equally to COPUC’s petition to extend the waiver until July 1. The Commission should grant the request.

Colorado’s Extension Request

On February 28, 2013, COPUC filed an update, as required by the waiver order.¹¹ The letter described new LITAP/Lifeline modernization legislation that had been introduced the day before. To the surprise of many (including COPUC and carriers), the bill introduced would not amend Colorado’s eligibility criteria. Instead, it will eliminate the state program altogether.

The legislation will change Colorado to a federal default state and, remarkably, also end the state’s long-standing role as administrator of Lifeline programs for Colorado consumers. In that and subsequent updates to the Commission, COPUC has shown that, whether or not the law-making process is completed by April 1, the legislation underway in Colorado will make far more dramatic changes to the Lifeline program than expected. Recognizing the fact, the bill, as amended by committee on March 5, will continue the state program through July 1 to allow a short transition time for the state agencies and ETCs like CenturyLink.

Accordingly, on March 8, 2013, COPUC filed its request for an extension of the waiver until July 1.¹²

⁸ *Id.* at ¶ 14.

⁹ *Id.* at ¶ 16.

¹⁰ *Id.* at ¶ 14 n.45.

¹¹ Letter of Douglas Dean, COPUC, to Marlene Dortch, FCC, WC Docket No. 11-42 (filed Feb. 28, 2013).

¹² *Petition for Waiver Extension of the Colorado Public Utilities Commission* (filed Mar. 8, 2013).

Good Cause Justifies the Short Waiver Extension.

Colorado Law Will Change on July 1.

Colorado's new law has passed the Senate and today passed the House.¹³ It will soon be sent to Governor John Hickenlooper for signature. Even if signed before the April 1 waiver deadline, however, the state law will remain in effect – and state administration of the Lifeline/LITAP program may continue – through July 1, to allow time for the state's management of the program to be wound down and transitioned to ETCs.

Therefore, for the next 90 days, ETCs will remain subject to Colorado state law that directs COPUC and DHS to administer the low income telephone assistance programs and sets eligibility. Without the brief waiver extension, ETCs and the state would be placed in the untenable and unexpected position of facing conflicting state and federal eligibility criteria, with the state overseeing state and federal program applications but not recognizing some of the criteria under the new federal rules. The federal rules mandate sole eligibility criteria, such as income, that the state law does not recognize.

In granting the waiver until April 1, 2013, the Commission found “[t]he uniform eligibility criteria established in the waiver “are designed to create a baseline of eligibility for the federal program, to facilitate the establishment of an automatic means of checking for Lifeline eligibility, and to reduce burdens on ETCs by standardizing eligibility across states.”¹⁴ It found the waiver would “also prevent consumer confusion which may result from an interim bifurcated process in which ETCs sign up consumers through certain qualifying programs, while the state continues to sign up consumers through the qualifying programs enumerated in state law.” The Commission appropriately should grant the modest extension through July 1 to allow transition from the Colorado law, which will expire on that date.

Time to Transition from State Administration is Necessary.

Because the new law will require transitioning Lifeline administration to carriers, it continues funding the LITAP program and state administration of Lifeline through July 1. The new law recognizes that the changes it will compel cannot be implemented overnight.

Shifting Lifeline administration to carriers is not a simple task. Under the old law, the state has handled eligibility determination, validation, certification and recertification, and record-keeping. Setting up Lifeline administration is an intricate process that requires IT changes, process changes, testing, staffing, training, and coordination with the outgoing state administrators. CenturyLink alone has nearly 13,000 Lifeline subscribers in Colorado. As COPUC explained in its extension request, COPUC and DHS will need time to work with

¹³ The progress of SB-13-194 can be monitored at <http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont/6B7E9FB58612F5F787257B040062621F?Open&target=/clics/clics2013a/csl.nsf/billsummary/BA0CC07C9FB0AB6A87257B030074C830?opendocument>.

¹⁴ *Waiver Order* at ¶ 13.

ETCs, particularly CenturyLink, to effect the change. A transition period through July 1 – as reflected in SB 13-194 -- is necessary to ensure a smooth transition.

Allowing this transition is in the public interest to minimize confusion, processing delays, and inconvenience for consumers. It is in the public interest to allow carriers reasonable time to modify systems and processes to assume the administration functions currently handled by the state of Colorado. CenturyLink had no reason to expect the Colorado legislature would eliminate the program and require carriers like it to assume responsibility for the entire program. Nor was CenturyLink expecting to have to recertify Colorado's 13,000 subscribers in 2013 wholly on its own. It is in the public interest to allow a transition to minimize risks of waste, fraud or abuse as eligibility screening, certification, processing, and record-keeping functions are shifted for many thousands of Lifeline accounts statewide.

It certainly makes no sense to expect ETCs to try to administer applications for some customers, under some federal eligibility criteria, during this short interim period. Without the modest extension to match the transition from state Lifeline administration, ETCs could be put in the unreasonable position of needing to implement a temporary, bifurcated approach to Lifeline benefits, during the short remaining time that the old Colorado law remains in effect. Because the state will not be modifying its eligibility criteria to conform to the FCC's criteria, without the waiver ETCs could be expected to provide a process for customers to apply for federal-only lifeline benefits, focused on those few federal criteria not recognized by the state.

Today, customers apply directly with the state and, when they are approved for benefits, they receive both state and federal discounts. Without the extension, from April 1 to July 1, customers would still be able to apply with the state, which continues to manage the Lifeline program, but some might expect ETCs to provide a process for customers to apply for federal-only benefits if they participate in a program or have an income level that the state does not currently recognize. CenturyLink would be unable to implement such a system on April 1, and it would be unreasonable to require, as it was never expected and would quickly become moot.

CenturyLink Cannot Implement Changes In Colorado Without Additional Time.

To ensure the responsible management of the program as Colorado completes its change in law, ETCs like CenturyLink share COPUC's need for the extension to be granted. For its part, CenturyLink cannot make the unexpected changes necessary to implement separate federal and state eligibility systems by April 1.

Like other carriers, CenturyLink has always linked state and federal Lifeline programs; under long-standing Commission rules, eligibility for one meant eligibility for the other. Absent the extension of the waiver, ETCs in Colorado would be placed in the untenable position of needing to develop processes to receive and process applications separate from the state administrator. The ETCs would also need to apply Lifeline discounts to applicants who are not eligible according to the state's eligibility criteria, but are eligible under those criteria included in the few federal rules not recognized by the state. With Colorado now having revised its laws to eliminate the state LITAP program effective July 1, it makes no sense to

develop an interim process for providing separate state and federal Lifeline benefits. CenturyLink could not be expected to complete the steps necessary to adopt such procedures before they would become moot on July 1. It would make far more sense to focus company resources on making the changes needed to implement the changes that will soon be needed.

The waiver order itself acknowledged it made no sense to require carriers to separate federal and state eligibility, as adopting uniform eligibility is in the public interest and as Colorado will be revising its statute.¹⁵ That statutory work is now effectively done, and COPUC has advised it is “likely” that Colorado will have changed the statute not later than June 8 (the latest date for the governor’s signature), with the new law essentially phased in on July 1. It would make no sense to now direct limited IT and other resources to create a new bifurcated system for this one state, when the issue will become moot in scarcely 90 days.

Nor can ETCs be expected to assume the entire administration of the program without allowing reasonable time to change systems and processes. CenturyLink needs time to implement and test IT changes and to confirm accuracy. CenturyLink was not expecting to need such IT changes, nor would it be reasonable to assume CenturyLink could or should have directed limited resources to developing capabilities based on speculation about what the state of Colorado might or might not do in changing its law. Moreover, IT changes which affect billing records systems, such as these, must be grouped to ensure accuracy and reliability. Testing must follow to avoid errors that could otherwise affect consumers and the Lifeline program. CenturyLink will also need to put in place application, eligibility review, certification and recertification processes and record-keeping for Colorado – all measures currently handled by the state through July 1. CenturyLink will need to secure additional resources and headcount to manage the increased workload for Lifeline administration.

Nor can CenturyLink assume the entire administration of the program without allowing reasonable time to change systems and processes. CenturyLink needs time to implement and test IT changes and to confirm accuracy. CenturyLink was not expecting to need such IT changes, nor would it be reasonable to assume CenturyLink’s systems could or should have directed limited resources to developing capabilities based on speculation about what the state might or might not do in changing its law. Moreover, IT changes, such as these, which affect the billing records systems are grouped to ensure accuracy and reliability. Testing must follow to avoid errors. CenturyLink will also need to put in place the application, eligibility review, certification and recertification processes, and record keeping for Colorado – all measures currently handled by the state. CenturyLink will need additional resources and at least one headcount to manage the increased workload for Lifeline administration.

CenturyLink has just begun steps to prepare for implementing the unexpected transition of Lifeline administration in Colorado, but the necessary changes cannot be completed overnight or without coordination with state authorities. If the waiver extension is not granted, however, CenturyLink will have no choice but to delay processing of any Colorado Lifeline

¹⁵ Waiver Order at ¶ 13.

Ms. Marlene H. Dortch
March 28, 2013

Page 8 of 8

applications until its necessary systems and process changes have been put in place and coordination with COPUC and DHS has been completed.

Extending the Waiver Has Public Benefits and Little Downside.

Extending Colorado's waiver until July 1 will benefit the public interest, while imposing little burden on the Lifeline program. CenturyLink has already described how a transition through July 1, 2013 will avoid confusion, processing delays, and inconvenience for consumers that would arise if CenturyLink and other ETCs are not allowed the necessary transition. It has described how it will allow carriers to ensure a seamless and accurate transition of administration from the state, minimizing errors and opportunities for waste, fraud, and abuse. The importance of these issues can hardly be overstated.

At the same time, during an additional 90 days of state administration of Lifeline in Colorado, there will be no added burden to the Lifeline program, and the continuing impact on potentially eligible consumers would be brief. CenturyLink is the largest local exchange carrier in the state, with nearly 13,000 subscribers receiving low income service discounts. Currently, however, CenturyLink receives only about 175 new Lifeline Colorado subscriber additions per month, and that includes reapplications by newly-recertified customers returning to the program. Although the new federal rules include some eligibility criteria not recognized by the state statute, such as income, the number of applicants eligible under the new federal rules, but denied under the state's eligibility law, would likely be only a small fraction of that number. Most applicants can qualify under more than one recognized criteria, and CenturyLink understands that DHS regularly assists applicants in establishing eligibility under Colorado law.

Conclusion

CenturyLink appreciates the difficult task the Commission has undertaken in reforming the Lifeline program nationwide, and it recognizes the substantial progress the Commission has made in this regard. CenturyLink understands the Commission's need to encourage program discipline among state administrators, eligible telecommunications carriers, and Lifeline subscribers. In Colorado, however, the Commission had compelling public interest reasons to grant a waiver of the uniform eligibility criteria to April 1. Those reasons still apply and equally compel a short extension of the waiver to July 1, 2013.

Sincerely,

/s/ John E. Benedict

Copy via email to:

Kimberly Scardino
Garnet Hanly